

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF
RELEASE OF PROOFS OF CLAIM ON REQUEST**

NOW COMES Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home") and US International Reinsurance Company (collectively, the "Companies"), and moves for an order approving the Liquidator's release of proofs of claim filed in the liquidations of the Companies on request. As reasons therefor, the Liquidator states as follows:

1. The Liquidator has received a request from the law firm of Orr & Reno for copies of proofs of claim filed in the Home liquidation by various companies insured or reinsured by Home. A copy of the request is attached as Exhibit A.

2. For the reasons set forth below, the Liquidator considers the proofs of claim to be court records that are available to the public on request (subject to redaction of Social Security or federal tax identification numbers, telephone numbers and email addresses). In the absence of clear statutory guidance on the issue, however, and in order to permit comment on this position by any interested persons, the Liquidator files this motion for approval of release of proofs of claim on request.

3. Records of the liquidation generally are not public records within the Right To Know Law, RSA 91-A, but are judicial records. The Insurance Commissioner, as Liquidator pursuant to the Orders of Liquidation for the Companies, is not a public body or agency within RSA 91-A. The liquidation of Home is a statutory proceeding in which the Commissioner is appointed as liquidator to take possession of the insurer and administer its assets “under the orders of the court,” RSA 402-C:21, I, and the Liquidator acts “[s]ubject to the court’s control.” RSA 402-C:25. See Rand v. Merrimack River Sav. Bank, 86 N.H. 351, 353 (1933) (under bank liquidation statute). In these circumstances, the records of the liquidation are not public records. See Farrimond v. State of Oklahoma, 8 P.3d 872, 875 (Okla. 2000) (records of insurer in custody of insurance commissioner as court-appointed receiver not subject to disclosure under Oklahoma Open Records Act); Kentucky Central Life Ins. Co. v. Park Broadcasting of Ky., Inc., 913 S.W.2d 330, 334-35 (Ky. App. 1996) (court appointed rehabilitator is not public agency within Kentucky Open Records Act); In re Consolidated Edison Co. of N.Y., 140 Misc. 2d 969, 532 N.Y.S.2d 186, 190-91 (Sup. Ct. 1988) (court-appointed liquidator is not agency but officer of the court not subject to New York Freedom of Information Law). See also RSA 402-C:50 (records of an insurer in liquidation may be destroyed with court approval when liquidator determines they are no longer useful).

4. Proofs of claim, however, are statutorily required documents that are to be filed to commence the determination of claims in the liquidation (although they may be omitted for certain types of claims not pertinent to the Home liquidation). See RSA 402-C:37 & :38. New Hampshire has recognized a right of public access to “those things which are filed in court in connection with a pending case.” Petition of Union Leader Corp., 147 N.H. 603, 604 (2002), quoting Thompson v. Cash, 117 N.H. 653, 654 (1977). There is a presumption of public access

to documents filed in connection with a pending case, limited by court rules and statutes. Id. at 604-605

5. The New Hampshire Legislature drew a distinction between proofs of claim, which are to be filed with the Liquidator, RSA 402-C:37, I, and objections to claims determinations, which are to be filed with the Court. RSA 402-C:41. It thus could be argued that the Legislature intended that proofs of claim not be publicly available. This would be consistent with a policy reflected in some more recent insurer examination statutes of keeping individual claims information confidential. See, e.g., RSA 400-A:37, IV-a(a) (records of market conduct examination are confidential); RSA 402-H:13 (in examination of third party administrator, “[a]ll claims information respecting individual claimants shall be kept confidential.”). However, the claimant’s name and address, the particulars of the claim, and the amount of the claim finally recommended are to be filed with the Court when the Liquidator makes recommendations on claims. RSA 402-C:45. Thus, the requirement that proofs of claim be filed with the Liquidator appears more likely to be intended to reduce the burden on the clerk’s office of receiving the proofs, rather than being intended to make proofs of claim confidential.

6. It is noteworthy that proofs of claim in federal bankruptcy cases are public records. See 11 U.S.C. § 107 (“papers filed in a case under this title” are “public records”); Fed. R. Bankr. P. 5005(a) (listing proofs of claim among the “papers” to be filed with the clerk). The bankruptcy proof of claim form requests essentially the same information as the Home proof of claim form. Section 107 of the Bankruptcy Code was intended to codify the general right of access to judicial records, see 2 Collier on Bankruptcy ¶ 107.02, and Congress viewed the claims register as public. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 317-318 (1977); S. Rep. No. 989,

95th Cong., 2d Sess. 30 (1978). This history is of significance because the federal and New Hampshire rights of access are similar. Compare 2 Collier on Bankruptcy ¶ 107.02 (Section 107 reflects common law right of access articulated in Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978)), with In re Bowman Search Warrants, 146 N.H. 621, 626 (2001) (New Hampshire presumption of access to court records closely resembles common law articulated in Nixon).

7. In these circumstances, the Liquidator proposes to provide copies of proofs of claim when requested by a member of the public, subject to redaction of Social Security or federal tax identification numbers and telephone numbers and email addresses, payment of costs, and, where appropriate, reasonable arrangements to avoid undue burden on the estates. See Douglas v. Douglas, 146 N.H. 205, 208 (2001).

WHEREFORE, the Liquidator requests that the Court enter an order granting the Liquidator's motion and approving release of proofs of claim on request, subject to redaction of Social Security or federal tax identification numbers and telephone numbers and email addresses, payment of costs, and, where appropriate, reasonable arrangements to avoid undue burden.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE
SOLELY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY AND US INTERNATIONAL
REINSURANCE COMPANY,

By his attorneys,

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Eric A. Smith
Rackemann, Sawyer & Brewster
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Boston, MA 02111
(617) 542-2300

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Release of Proofs of Claim on Request was sent, this 6th day of October, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

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US International Reinsurance Company
Docket No. 03-E-0112

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Exhibit A

Orr&Reno

Professional Association

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Telephone 603-224-2381 • Facsimile 603-224-2318
www.orr-reno.com

Malcolm McLane
(Retired)

August 11, 2005

VIA FIRST CLASS MAIL

Michael Averill
The Home Insurance Company in Liquidation
286 Commercial Street
Manchester, NH 03101

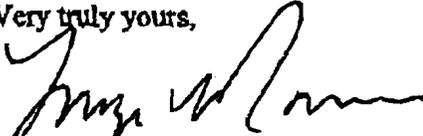
Re: Request for Records

Dear Mike:

We would like to obtain copies of Proofs of Claim for each claimant identified on the attached list, as soon as is conveniently possible. We will, of course, pay for any costs associated with this request for records.

If you should have questions or comments, please do not hesitate to call me at (603) 223-9143. Thank you in advance for your cooperation.

Very truly yours,



George W. Roussos

mlb
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Enclosure

- Ronald L. Snow
- Charles F. Leahy
- Mary Susan Leahy
- William L. Chapman
- George W. Roussos
- Howard M. Maffei
- James E. Morris
- John A. Malmberg
- Martha Van Oot
- Douglas L. Patch
- Connie L. Rakowsky
- Jill K. Blackmer
- James P. Bassett
- Emily Gray Rice
- Steven L. Winer
- Peter F. Burger
- Lisa Snow Wade
- Jennifer A. Eder
- Roy S. McCandless
- Pamela E. Phelan
- Connie Boyles Lane
- Jeffrey C. Spear
- Judith A. Fairclough
- James F. Laboc
- Maria M. Proulx
- Michael R. Rizzo

Susan S. Geiger
(Of Counsel)

<u>POC Number</u>	<u>POC Claimant Name</u>
AMBC465489	Navigators/Somerset Marine Inc. (was Navigators Insurance)
AMBC465539	North River Insurance Company
AMBC465617	One Beacon Insurance Company
AMBC465700	Phoenix Insurance Company
AMBC466002	St. Paul Fire & Marine Ins. Co.
AMBC701091	St. Paul Fire and Marine Insurance Company
AMBC701092	St. Paul Fire and Marine Insurance Company
AMBC701093	St. Paul Fire and Marine Insurance Company
AMBC701094	St. Paul Fire and Marine Insurance Company
AMBC701095	St. Paul Fire and Marine Insurance Company
AMBC701096	St. Paul Fire and Marine Insurance Company
INTL277824	St. Paul International Insurance Company Limited
AMBC466068	Swiss Reinsurance America Corp.
AMBC466169	TIG Insurance Company
AMBC704669	TIG Insurance Company
AMBC704668	TIG Insurance Company as Successor by Merger to International Insurance
AMBC466128	Travelers Casualty & Surety Co.
AMBC466136	Travelers Indemnity Co. of IL
AMBC466137	Travelers Indemnity Company
INTL459496	ALEA Europe Ltd.
AMBC464004	American Agricultural Ins. Co.
INTL277886	Central Reinsurance Corporation

RAHM700690	Cityvest International Limited
RCED333322	Cityvest
RAHM709400	E&S Rueckversicherung - AG
RAHM331165	Employers Mutual Casualty Insurance Co.
RAHM331179	Fireman's Fund Insurance Co. (was Fireman's Fund American Group)
RAHM700677	Hanover Rueckversicherung - AG
RCED333146	IF P&C Insurance Company (was Industrial Insurance)
AMBC465355	Mitsui Sumitomo Ins. Co. of Amer.
RAHM700626	MMA La Mutuelle Du Mans Ass.IARD
RAHM 331549	Munchener Ruckverisicherungs-Ges, Germany
RAHM700832	Netherlands Reinsurance Group NV
INTL460022	QBE Re (Europe) Ltd
RAHM700451	QBE Reinsurance (UK) Ltd
AMBC466070	Scor Reinsurance Company
AMBC464562	Stonebridge Casualty Ins Co. (was CORPA Reinsurance Co.)
AMBC466056	Suecia Insurance Company
INTL709447	Swiss RE Italia SPA
INTL709449	Swiss RE Italia SPA
INTL709450	Swiss RE Italia SPA
INTL709451	Swiss RE Italia SPA
INTL709559	Swiss RE Italia SPA
INTL709438	Swiss RE Italia SPA
INTL709440	Swiss RE Italia SPA

INTL701366	Swiss RE Italia SPA (was Unione Italiana Di Riassicurazione)
INTL709446	Swiss RE Italia SPA
AMBC466399	XL Reinsurance America Inc.
Unknown	Celotex [Asbestos Claim, Home Years 8/1/67-10/1/79]
Unknown	Durabla [Asbestos Claim, Home Years 4/30/76-77]
Unknown	Kentile Floors [Asbestos Claim, Home Years 1978-1981]
Unknown	Metalclad [Asbestos Claim]

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